

Mike McHenry, 5/8/2006

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE WESTERN DISTRICT OF WASHINGTON  
3                   AT SEATTLE

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5                   UNITED STATES OF AMERICA,

6                   et al.,

7                   Plaintiffs,

8                   vs.

9                   STATE OF WASHINGTON, et al.,

10                  Defendants.

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11                   DEPOSITION UPON ORAL EXAMINATION  
12                   OF  
13                   MIKE MCHENRY  
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15  
16                   9:00 a.m.

17                   May 8, 2006

18                   OFFICE OF THE ATTORNEY GENERAL  
19                   900 Fourth Avenue 2000  
20                   Seattle, Washington 98164

21                   JACQUELINE L. BELLOWS  
22                   CCR 2297

Mike McHenry, 5/8/2006

Page 19

1 Q Were there any other state-owned culverts that you  
2 identified in this, the Salt Creek study?

3 A Yes. There were several owned by the Department of  
4 Natural Resources.

5 Q Where were those at?

6 A On the west side of the drainage, DNR has a block of  
7 state-owned forest lands. They're all contained in that  
8 block of 1200 acres.

9 Q Do you know if the DNR had previously identified those  
10 as barrier culverts?

11 A I think between 2003 and 2005 they did some work out  
12 there to identify them, but I'm not absolutely certain.

13 Q Did the tribe provide a copy of this Salt Creek report  
14 to the DNR?

15 A Yes.

16 Q And presumably you sent one to DFW as well?

17 A Yes.

18 Q So in the Salt Creek study, did you make any effort to  
19 quantify the potential improvement in fish populations  
20 that could be gained by eliminating these barrier  
21 culverts?

22 A We didn't try to estimate numbers of fish. We used  
23 linear or aerial measures of habitat above, and the type  
24 of habitat.

25 Q Is it possible to estimate the numbers of fish that

Mike McHenry, 5/8/2006

Page 23

1 Q Yes.

2 A Informal assessments?

3 Q Either formal or informal.

4 A Yes. The answer would be we've done some informal  
5 assessments.

6 Q What do you mean by "informal assessment"?

7 A That means me getting out and walking to the culvert and  
8 looking at it and applying my professional judgment.

9 Q Through the course of those informal assessments, have  
10 you identified any state-owned barrier culverts?

11 A Yes.

12 Q Where were those, if you recall?

13 A Siebert Creek, Ennis Creek, Dry Creek, Colville Creek,  
14 Joe Creek, Butler Creek, unnamed tributary to the Hoko,  
15 Field Creek, and there's likely others. That's what I  
16 remember off the top of my head.

17 Q Were those all state Department of Transportation-owned  
18 culverts?

19 A Yeah.

20 Q Did you make the state aware of those barrier culverts  
21 that you've identified?

22 A We have.

23 Q Do you know if all of those are on the array of barrier  
24 culverts that the DFW has identified?

25 A I believe the majority of those culverts are on their

Mike McHenry, 5/8/2006

Page 24

1 inventory.

2 Q Are there other examples, other than the ones you've  
3 just named, with the Pysht and Salt Creek and then  
4 these, this other group, other examples of barrier  
5 culverts that you intend to talk about at trial?

6 MR. BERNTSEN: Are we talking about just the  
7 tribe's watershed, Elwha?

8 MR. DIETRICH: Is that an objection?

9 MR. BERNTSEN: I'm just seeking clarification  
10 for the witness.

11 MR. DIETRICH: All right.

12 A There will likely be other culverts from outside the  
13 Elwha area.

14 Q (By Mr. Dietrich) Mr. McHenry, within the Elwha's usual  
15 and accustomed areas, have we pretty much covered the  
16 ones that you would anticipate talking about as  
17 illustrative examples?

18 A There may be others.

19 Q Which others?

20 A I have to do the full assessment of the potential  
21 culverts and make that evaluation. I haven't done that  
22 yet.

23 Q Now, with respect to culverts located outside the  
24 Elwha's U&A's have you identified any particular  
25 culverts that you intend to talk about as illustrative

Mike McHenry, 5/8/2006

Page 25

1 examples?

2 A The only thing I've done is to look at some of the  
3 databases, the DFW database in particular, and to talk  
4 to some of the other tribal biologists. But I do not  
5 have a formal list of culverts at this time.

6 Q Okay. Now, I think we talked about that you use the  
7 same assessment protocol for identifying barriers that  
8 DFW uses. Are you familiar with the protocols that the  
9 DFW uses to ascertain the amount of upstream habitat  
10 that might be associated with a particular barrier  
11 culvert?

12 A Yes, I'm somewhat aware of the methodology.

13 Q Do you intend to express any disagreement or criticism  
14 of that methodology during your testimony at trial?

15 A No.

16 Q How about, are you familiar with the protocols that are  
17 used to design culverts that are fish passable? Are you  
18 familiar with those at all?

19 MR. SLEDD: Objection as to vagueness. It can  
20 be multiple agencies.

21 Q (By Mr. Dietrich) Mr. McHenry, are you familiar with the  
22 protocols set forth in the Washington State Department  
23 of Fish & Wildlife's manual for culvert design such that  
24 enables a design that is fish passable?

25 A I have read the methods.

Mike McHenry, 5/8/2006

Page 65

## C E R T I F I C A T E

STATE OF WASHINGTON )

) SS

COUNTY OF KING )

I, Jacqueline L. Bellows, a Notary Public in and for the State of Washington, do hereby certify:

That the foregoing deposition was taken before me at the time and place therein set forth;

That the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth; and that the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me, and thereafter transcribed under my direction;

That the foregoing transcript is a true record of the testimony given by the witness and of all objections made at the time of the examination, to the best of my ability.

I further certify that I am in no way related to any party to this matter nor to any of counsel, nor do I have any interest in the matter.

Witness my hand and seal this 19th day of May, 2006.

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Jacqueline L. Bellows, Notary  
Public in and for the State  
of Washington, residing at  
Arlington. Commission  
expires October 19, 2006.